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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 10/632,129 | 07/31/2003 | Douglas J. Habing | 3/1130US | 1830 |
| 22822 7590 01/03/2008 LEWIS, RICE & FINGERSH, LC ATTN: BOX IP DEPT. 500 NORTH BROADWAY SUITE 2000 ST LOUIS, MO 63102 | | | EXAMINER HWANG, VICTOR KENNY | |
| | | | ART UNIT 3764 | PAPER NUMBER |
| | | | NOTIFICATION DATE 01/03/2008 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDEPT@LEWISRICE.COM
KDAMMAN@LEWISRICE.COM

Office Action Summary

Application No.

10/632,129

Applicant(s)

HABING, DOUGLAS J.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34,35,38-44,47-55 and 57-63 is/are pending in the application.
- 4a) Of the above claim(s) 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34,35,38-44,47-55 and 58-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2007 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 34-56 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 59 and 61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not appear to support the subject matter of new claims 59 and 61, wherein the pull-type exercise comprises a converging exercise and the

push-type exercise comprises a diverging exercise. Applicant is requested to identify support for the subject matter of the new claims.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pull-type exercise comprising a converging exercise and the push-type exercise comprises a diverging exercise (limitations found in claims 59 and 61); and the first arm and second arm move dependently (claim 43) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 34, 35, 38, 40-42, 44, 47, 49, 50, 58, 59, 62 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hammer Strength* (Iso-Lateral Chest Press/Lat Pulldown, Picture Price List, April 1994). *Hammer Strength* discloses an iso-lateral chestpress/lat pulldown exercise machine comprising a frame; a weight resistance horn for supporting a plurality of weight plates; first and second arms rotatably attached to the frame to rotate only about respective first and second axes permitted by respective first and second pivot points;, the first and second axes being non-parallel to each other; first and second sets of handles attached to the arms, wherein the first set of handles are manipulated by a user to perform a pushing, converging exercise along a fixed path, i.e. a chest press exercise and the second set of handles are manipulated by a user to perform a pulling, diverging exercise along a fixed path, i.e. a lat pull down exercise. The first and second arms move independently and are capable of being used wherein the first set of handles are manipulated by a user to perform a pulling, diverging exercise along a fixed path and the second set of handles are manipulated by a user to perform a pushing, converging exercise along a fixed path

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 39, 48, 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hammer Strength* (Iso-Lateral Chest Press/Lat Pulldown, Picture Price List, April 1994) in view of *Domzalski* (US Pat. 5,217,422). *Hammer Strength* has been discussed above, and such discussion is incorporated herein. *Hammer Strength* discloses the invention as claimed except for the handle at the first handle position and the handle at the second handle position comprises the same handle moved between the two locations (claims 39 and 48).

Domzalski discloses an exercise machine comprising a handle movable between two locations to perform a pushing exercise at a first location and a pulling exercise at a second location (see Fig. 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise machine of *Hammer Strength* with a handle that is movable between two locations, since *Domzalski* discloses that a handle is movable between two locations so that in a first location the handle is used to perform a pushing exercise and at a second location, the handle is used to perform a pulling exercise, which would provide less interference from multiple handles during use.

10. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hammer Strength* (Iso-Lateral Chest Press/Lat Pulldown, Picture Price List, April 1994) in view of *Baldwin* (US

Pat. 4,478,411). *Hammer Strength* has been discussed above, and such discussion is incorporated herein. *Hammer Strength* discloses the invention as claimed except for the first and second arms move dependently (claim 43).

Baldwin discloses an exercise machine comprising first and second arms 22 moving in converging or diverging directions against the same resistance source and having multiple movable engagement interfaces 24,25 for performing an abductor exercise or an adductor exercise. The two arms move dependently against the common resistance source. It is well known in the art to link the movement of two exercise arms, so that a stronger side of a muscle group can assist a weaker side of the muscle group.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise arms of *Hammer Strength* with dependent movement, since *Baldwin* discloses that two arms can move dependently to assist a weaker side of a muscle group.

11. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hammer Strength* (Iso-Lateral Chest Press/Lat Pulldown, Picture Price List, April 1994) in view of *Simonson* (US Pat. 5,580,341). *Hammer Strength* has been discussed above, and such discussion is incorporated herein. *Hammer Strength* discloses the invention as claimed except for the first and second arms move dependently (claim 43).

Simonson'341 discloses an exercise machine comprising exercise arms that can move independently or could be made to move dependently (Figs. 8-12 and 18-20) to cause

symmetrical movement. Symmetrical movement is known to permit a weaker muscle to be assisted by a stronger muscle in order to complete an exercise movement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise arms of *Hammer Strength* with the symmetrical dependent movement of *Simonson*'341, so that a stronger muscle can assist a weaker muscle to completion of the exercise movement.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang
December 26, 2007



JEROME DONNELLY
PRIMARY EXAMINER